

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 13-N-10562-LMA
	)	
THOMAS VICTOR DILLON,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
Member No. 236380,	)	ENROLLMENT
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Thomas Victor Dillon (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with California Rules of Court, rule 9.20. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on May 25, 2005, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On February 19, 2013, the State Bar filed and properly served the NDC on respondent by first-class mail and by certified mail, return receipt requested, to his membership records address.<sup>3</sup> The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt was returned to the State Bar, but the signature on the return card was not legible. The NDC served by first-class mail was not returned to the State Bar by the U.S. Postal Service.

Thereafter, the State Bar (1) attempted to contact respondent by telephone at the number he had called the assigned deputy trial counsel from to respond to respondent's voicemail asking about the possibility of his resignation from practice; (2) sent two emails to respondent; (3) later attempted to reach respondent by telephone twice at the number he had earlier called from and once at his membership records telephone number; (4) attempted to reach respondent at

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<sup>3</sup> The NDC fails to attach the Supreme Court order in the case S184690 filed on October 23, 2012. (Rule 5.334.) The court takes judicial notice pursuant to Evidence Code section 452, subdivision (d), of the Supreme Court order in the case S184690 filed on October 23, 2012, later amended nunc pro tunc, by a Supreme Court order issued on October 31, 2012. Further, the court admits into evidence, the Supreme Court order in the case S184690 filed on October 23, 2012, and directs the Clerk to include copies in the record of this case.

his membership records email address;<sup>4</sup> and (5) contacted the assigned probation deputy to ascertain whether respondent's profile contained any other address.

Respondent failed to file a response to the NDC. On March 19, 2013, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, and by regular mail, to his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on April 4, 2013. The order entering the default was properly served on respondent at his membership records address by certified mail, return receipt requested. The order was returned to the State Bar Court by the United States Postal Service as "UNCLAIMED" and "UNABLE TO FORWARD." The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On October 7, 2013, the State Bar filed and properly served the petition for disbarment on respondent by first-class mail and certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent has not contacted the State Bar since April 4, 2013, when respondent's default was entered; (2) there is one probation referral

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<sup>4</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

matter and one disciplinary matter pending against respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on November 4, 2013.

Respondent has two prior records of discipline.<sup>5</sup> Pursuant to a Supreme Court order filed on September 28, 2010, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions. Respondent stipulated in the prior disciplinary matter to culpability and discipline for (1) failing to perform legal services with competence in one matter; (2) failing to respond to reasonable client requests for information in one matter; (3) failing to keep the client informed of a significant development in one matter; (4) failing upon termination to promptly release client papers and property upon request in two matters; (5) failing to take reasonable steps to prevent prejudice to a client in one matter; and (6) failing to promptly refund unearned advanced fees paid by his client in one matter.

Pursuant to Supreme Court order filed on October 23, 2012, and amended nunc pro tunc on October 31, 2012, respondent's probation was revoked and he was suspended from the practice of law for one year and until he makes restitution. The court found that respondent failed to comply with certain conditions attached to his earlier disciplinary probation.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that

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<sup>5</sup> The court admits into evidence the certified copies of respondent's prior records of discipline that are attached as Attachments 1 and 2 to the State Bar's October 7, 2013, petition for disbarment after default.

respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the October 23, 2012, Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (a) filed and properly served the NDC on respondent by first-class and certified mail, return receipt requested, at his membership records address; (b) telephoned respondent to respond to his inquiry about resigning; (c) telephoned respondent again at the number he had called the assigned deputy trial counsel from and also attempted to reach respondent at his membership records telephone number; (d) attempted to reach respondent at his membership records email address; and (e) contacted the probation deputy assigned to respondent;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Thomas Victor Dillon be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

#### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Thomas Victor Dillon, State Bar number 236380, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: January \_\_\_\_, 2014

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LUCY ARMENDARIZ  
Judge of the State Bar Court

